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November 29, 2005

Via Overnight Mail and ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

**Re: KCRA-DT, Sacramento, CA
MB Docket No. 05-317
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST**

Dear Ms. Dortch:

On behalf of Hearst-Argyle Stations, Inc. ("Hearst-Argyle"), licensee of Digital Television Station KCRA-DT, Sacramento, California, this letter requests a waiver to prohibit satellite subscribers from obtaining signal tests of KCRA-DT's digital signal pursuant to Section 339(a)(2)(D)(vii) of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The instant request is filed pursuant to the procedures set forth in the Commission's Public Notice in DA 05-2979 (Nov. 17, 2005).

KCRA-DT is the NBC affiliate located in the Sacramento Designated Market Area ("DMA"). The Sacramento DMA is ranked 19th among Nielsen Media's 210 television markets for the 2005-2006 television season. KCRA-DT has received a tentative digital channel designation of

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Channel 35, which is KCRA-DT's allotted digital channel. *See* Public Notice, DA 05-2649 (Oct. 4, 2005). Accordingly, absent grant of the instant waiver request, effective April 30, 2006, satellite subscribers may request a signal test to demonstrate eligibility under SHVERA to receive a distant digital signal of a station affiliated with the same network as KCRA-DT.

Pursuant to **Section 339(a)(2)(D)(viii)(IV)** of the Act, Hearst-Argyle requests a waiver on the basis that KCRA-DT "experiences a substantial decrease in its digital signal coverage due to necessity of using [a] side-mounted antenna."

As certified in its Form 381 filing (File. No. BCERCT-20041105AAV), KCRA-DT intends to operate its post-transition DTV station based on its allotted replication facilities. KCRA-DT is currently operating its DTV facility from a different tower pursuant to its DTV license in File No. BLCDT-20040122ADR. As previously explained to the Commission in KCRA-DT's request for waiver of the replication deadline filed on July 1, 2005, it is physically impossible for KCRA-DT to construct its DTV top-mount replication facility at its allotted height until the NTSC top-mount KCRA-TV antenna is removed at the end of the DTV transition.

While KCRA-DT is currently operating its DTV facility at maximum permissible power from its currently licensed site, the present operation results in a substantial decrease in its digital signal coverage area compared to its future replication facility. As previously submitted to the Commission, KCRA-DT's present operation is predicted to provide service to 4,921,573 people, while its future operation is predicted to provide service to 5,276,875 people. *See* Hearst-Argyle Supplement to Replication Waiver Request, Engineering Statement, MB Docket No. 03-15 (July 1, 2005).

Thus, absent grant of the instant waiver request to prevent signal testing under SHVERA, KCRA-DT is in jeopardy of losing service to 355,302 people who may otherwise be eligible to receive service from a distant network affiliate.

Furthermore, were KCRA-DT to proceed with construction of its replication facility before the end of the DTV transition, Hearst-Argyle would have to expend considerable resources to move its NTSC antenna to a lower level on the tower to make room for its DTV antenna. These costs, which would include the cost of purchasing an NTSC side-mount antenna, installation, and reworking the transmission line, would be "sunk costs" in equipment and labor that will only be useful until the DTV transition is complete. In addition, completion of KCRA-DT's replication facility before the end of the DTV transition would require Hearst-Argyle to lower KCRA-TV's NTSC antenna, resulting in a loss of NTSC service to approximately 211,398 people. *See id.*

Accordingly, because KCRA-DT experiences a substantial decrease of 355,302 people in its digital signal coverage area due to the present top-mount installation of its NTSC antenna and because construction of its replication facility prior to the end of the DTV transition would result in

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a substantial loss of NTSC service, KCRA-DT satisfies the waiver criterion of Section 339(a)(2)(D)(viii)(IV) of the Act.

For the reasons stated herein, Hearst-Argyle requests a waiver to prohibit digital signal testing under SHVERA. If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

A handwritten signature in black ink, appearing to read "David Kushner", with a long horizontal flourish extending to the right.

David Kushner
Coe W. Ramsey
Counsel to Hearst-Argyle Stations, Inc.

cc: Via Hand-Delivery
Nazifa Sawez
Federal Communications Commission
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